

Guidelines for IFQ Programs

Background Information for 'Managing Our Nation's Fisheries II'

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Over the last decade, one of the most hotly debated fishery management issues in the U.S. has been the use of individual fishing quotas (IFQs). IFQs (and other share-based management programs) allocate a privilege to harvest a certain portion of the total allowable catch (TAC) to individuals or groups of individuals. One of the advantages of share-based management is it can overcome many of the drawbacks of input controls. With a given percent of the TAC, participants may harvest their shares at their discretion, potentially reducing costs and increasing revenues through improved product quality and production recovery rates. IFQ holders may also be more selective in targeting to reduce bycatch. IFQ holders also have a protected share in the fishery limiting the incentive to take risks or compromise safety. IFQs, however, are not without their controversy or opposition. Some argue that allocations can be unfair, can cause major disruptions for fishermen, processors, and communities, and can contribute to environmental harms.

The debate surrounding IFQs received national attention during the process of reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act in 1996. Prior to this reauthorization, National Marine Fisheries Service had implemented three IFQ systems in U.S. fisheries; the North Pacific halibut and sablefish fisheries, the South Atlantic wreckfish fishery, and the Mid-Atlantic surf clam and ocean quahog fisheries. Controversy surrounding these programs led some stakeholders to call for a ban of IFQs. Congress, recognizing the benefits of IFQs but also seeing the need for further investigation, placed a moratorium on any new IFQ programs until October 1, 2000, while requesting the National Academy of Sciences to study a wide range of issues related to IFQs and provide recommendations to Congress.

After an exhaustive study of IFQs and other right-based management tools, the National Academy of Science recommended lifting the moratorium and made recommendations for Congress to consider to govern the development of new IFQ programs.

Once again, Congress is considering reauthorization of the Magnuson-Stevens Act. As a part of this process, many are advocating the development of a national policy for IFQs. In the past three years, no fewer than six proposed Congressional bills have included provisions defining future IFQ programs (see Table 1). Each of these bills would establish both substantive and procedural requirements for the development of IFQ programs. The remaining portion of this paper summarizes some of the more controversial issues under consideration in developing standards for future IFQ, and possibly all share-based management programs.

Allocation Criteria

The initial allocation of quota is typically one of the most controversial aspects of the development of an IFQ program. The potential for gains or losses to historic participants are perhaps greatest at the time of share allocation. In many cases, the allocation is based on catch history of vessel owners during select years. Many in the fishing industry view catch history as a fair measure for awarding quota because it reflects quantifiable and verifiable participation. Relying solely on catch history, however, tends to reward those that remained in the fishery for several years and disadvantages those that moved between

fisheries from year-to-year to alleviate capacity pressures and better utilize available resources, which may benefit others.

Catch history based allocations can also leave out many who depend on fisheries including captains and crews, processors, and communities. Some stakeholders advocate including these industry participants in the initial allocation. In particular, the U.S. Commission on Ocean Policy, PEW Ocean Commission, and the National Academy of Science recommended that community-based quota shares be considered in designing an IFQ program.

Some stakeholders also recommend a set aside to support entry level fishermen. Other commentators, however, believe that a program that creates a competitive market for transfers of quota with limitations on accumulation could provide opportunity for new entrants to purchase quota.

Discussion items:

- *Is allocating quota based on catch history the only fair measure of awarding quota to vessel owners? If not, what are some other measures that could be used to award quota?*
- *Should quota be awarded to persons that do not own vessels (crew, communities, etc.)? If so, what is a fair measure for awarding quota given they have no catch history?*
- *Can alternative approaches, such as an allocation of processing shares, accommodate interests outside of harvest shares?*
- *Should quota programs include set-asides for entry-level fishermen?*

Conservation

In general, the PEW Commission, U.S. Commission on Ocean Policy, and the National Academy of Science recommend that conservation of the fishery resources be considered when developing an IFQ system. Some stakeholders believe that IFQ programs should be required to promote conservation, including bycatch reduction. One legislative proposal would create an incentive for participants to meet conservation standards by increasing the annual allocations of quota to participants who that meet those standards.

Discussion items:

- *Should IFQ programs include incentives for participants who reduce bycatch and discards, and if so, what type of incentives?*

Limitation of Interests in IFQs and the Duration of an IFQ Program

All legislative proposals and recommendations for IFQ programs support limiting the interests that a person may hold in IFQ, allowing the revocation of quota at any time without compensation. Some stakeholders also have advocated that all IFQ programs sunset by a time certain after their implementation. Periods for sunset in the proposed legislation range from 5 years to 10 years, with most proposing a 10-year sunset. One rationale for requiring a sunset is that it is likely to compel council review of the IFQ program prior to its extension. Another argument advanced for mandatory sunsets is that permanent allocations would violate the public trust. Requiring a sunset, however, is argued by some to constrain or undermine some of the benefits of an IFQ program. For example, sunsets could dampen the market for transfers thereby reducing economic efficiency gains. Sunsets could also discourage lending institutions from loaning money for the purchase of shares, vessels, or equipment, thereby limiting entry to the fisheries. The National Academy of Science review of IFQs advised against a

required sunset, instead expressing its belief that regional councils should be allowed the flexibility to decide whether the circumstances in the fishery justify the inclusion of a sunset date.

Discussion item:

- *Should an IFQ program have a sunset date or term and if so, what is an appropriate duration?*

Program Review

In general, there is little disagreement about the necessity for periodic review of IFQ programs. Whether those reviews should be conducted by regional councils or a more central body, such as a council committee or Secretarial review panel is subject to debate. Either of these committees could serve several purposes including commenting on specific IFQ programs (and specifying changes to be made prior to renewal) or providing general recommendations for all IFQ programs. The National Academy of Science report, however, recommended that regional councils are likely to be better positioned to determine whether an IFQ program is meeting program goals.

Discussion item:

- *What is an appropriate review process, including who does it, when, and what criteria should be used to conduct periodic reviews of IFQ programs as they relate to national IFQ standards and specific FMP goals?*

Quota Transfers

Stakeholders also differ in their views concerning the extent of permissible IFQ transfers. Transferability of quota allows for improved economic efficiency. Unbridled transfers, however, could result in high concentrations of quota in only a few participants. Some commentators have recommended that quota be partitioned into different categories (e.g., small vessel shares) that would limit the transfer and use of quota to members of the identified category, as was done in the halibut/sablefish IFQ program. The National Academy of Science recommended the decision to allow quota transfers be left to the regional councils because it depends on the specific goals and objectives of the management regime.

Discussion item:

- *To what extent should quota be transferable in an IFQ program?*

Excessive Shares

Limits on accumulation of shares in IFQ programs are widely supported. Most stakeholders believe regional councils should be empowered to determine appropriate share caps to prevent excessive shares.

Discussion item:

- *What limits, if any, should be placed on the accumulation of quota shares?*

Referenda of IFQ Program

Since a new IFQ program is typically a dramatic management change in a fishery, several stakeholders support proposals requiring one or more referenda of permit holders approving an IFQ program prior to its submission to the Secretary for approval. A double referenda system would require a referendum approval prior to a regional council initiating the development of an IFQ program and a second referendum approving the fully specified program. Most proposals require supermajorities for program

approval. Referenda of only permit holders have the drawback of excluding other interested parties (e.g. crew, communities, etc.) from participation in the management decision. This may create the potential for a management program to be held hostage by permit holders who oppose the change despite potential environmental and economic benefits to others who rely on the fisheries.

Discussion items:

- *Should a referendum of an IFQ program be required before being proposed or implemented, and if so, what type of referendum should it be?*
- *Who should be allowed to participate in the referendum?*
- *What percentage should be required for approval?*

Fees

Some stakeholders argue that IFQ programs are more costly to implement and administer than other management programs. Since IFQ programs may convey significant benefits to participants, to recompense additional costs some proposals include cost recovery programs for the collection fees at time of the initial allocation, annually, or on transfer of shares. While these fee systems are generally advanced as a means to cover the added costs of IFQ programs or to capture rents for the public benefit, the overall effect of fee programs could be a disincentive to establish an IFQ program (or to engage in trades if the fee system taxes transfers). Some fee program proposals would also allow a portion of the fees to be set aside to fund a loan program for the purchase of quota by certain participants, such as small boat owners or new entrants. Some commentators oppose these loan programs on the basis that they inflate the price of shares in the market, with the only effect being to add further to the benefits realized by recipients of shares in the initial allocation.

Discussion items:

- *Should an IFQ program include cost recovery fees and for what purpose (i.e., to cover costs or capture rents for the public). If so, how should the fees be collected and what limits, if any, should there be?*
- *Should some of the fees collected be reserved for new entrants? If so, what percentage of the fees should be set aside?*

Enforcement, Monitoring, and Data Collection

Effective management, monitoring, and enforcement are critical to realizing the benefits of any management program, including an IFQ program. Increased observer coverage and routine collection of social and economic data are suggested by some commentators to assist managers in determining whether an IFQ program is meeting its intended purpose.

Discussion items:

- *When should IFQ programs include increased observer coverage?*
- *Should an IFQ program include a data collection program? If so, what type of data should be collected?*

Table 1. Proposed Changes to the Magnuson-Stevens Fishery Conservation and Management Act (MSA)

Guidelines	S 2066 Snowe	H.R. 4749 Gilchrest	NMFS 2003	S. 1106 IFQ Standards of 2003	H.R. 2621 IFQ Standards of 2003	October 2002 Kerry/Snowe	July 2002 Kerry
Length of IFQ program	<ul style="list-style-type: none"> • 10-years 	<ul style="list-style-type: none"> • 10-years 		<ul style="list-style-type: none"> • 10-years 	<ul style="list-style-type: none"> • Maximum 7 years 	<ul style="list-style-type: none"> • 10-years 	<ul style="list-style-type: none"> • Maximum 5 years
Considerations for determining the allocation process	<ul style="list-style-type: none"> • Fair and equitable • Present and historic participation • Use of community or area-based approaches • Entry-level fishermen, small vessel owners, skippers, crewmembers, and fishing communities • Fishery cooperative arrangements 	<ul style="list-style-type: none"> • Fair and equitable • Present and historic participation • Historical fishing practices • Dependence on the fishery • Minimize negative social and economic impacts on fishing communities • Entry-level fishermen, small vessel owners, or crew members who do not hold or qualify for IFQ 	<ul style="list-style-type: none"> • Fair and equitable • Current and historic harvests • Employment in the harvesting and processing sector • Investments • Cultural and social framework and the sustained participation of fishing communities that depend on these fisheries • Assist when necessary entry-level and small-scale fishermen, captains, and crew through set-asides of initial and secondary quota 	<ul style="list-style-type: none"> • Fair and equitable • Present and historic participation • Use of community or area-based approaches • Entry-level fishermen, small vessel owners, skippers, crewmembers, and fishing communities • Fishery cooperative arrangements 	<ul style="list-style-type: none"> • Fair and equitable • Present and historical participation • Procedures for allocating a portion of annual harvest to allow new entrants into the fishery 	<ul style="list-style-type: none"> • Fair and equitable • Present and historic participation • Use of community or area-based approaches and strategies • Entry-level fishermen, small vessel owners, skippers, crewmembers, and fishing communities • Fishery cooperative arrangements • May utilize royalty auctions for the allocation or reallocation of quota 	<ul style="list-style-type: none"> • Fair and equitable • Present and historic participation • Historical fishing practices • Dependence on the fishery • Economics of the fishery • Capability of the fishing vessels • Cultural and social framework • Affected fishing communities • Take into account conservation
What can be appealed	<ul style="list-style-type: none"> • Eligibility to receive or bid for quota, and limitations, restrictions, and revocations of quota 		<ul style="list-style-type: none"> • Determinations regarding administration of the individual fishing quota program 	<ul style="list-style-type: none"> • Eligibility to receive or bid for quota, and limitations, restrictions, and revocations of quota 	<ul style="list-style-type: none"> • Eligibility to receive or bid for quota, and limitations, restrictions, and revocations of quota 	<ul style="list-style-type: none"> • Eligibility to receive or bid for quota, and limitations, restrictions, and revocations of quota 	<ul style="list-style-type: none"> • Eligibility to receive or bid for quota, limitations, restrictions, revocations of quota, and referenda authorized
Include measures to promote conservation	<ul style="list-style-type: none"> • Yes, including reduction of bycatch 	<ul style="list-style-type: none"> • Yes 		<ul style="list-style-type: none"> • Yes, including reduction of bycatch 	<ul style="list-style-type: none"> • Create allocation incentives for fishermen who increase their gear selectivity and protection of EFH 	<ul style="list-style-type: none"> • Yes, including reduction of bycatch 	<ul style="list-style-type: none"> • Provisions to promote sustainable management of the fishery

Guidelines	S 2066 Snowe	H.R. 4749 Gilchrest	NMFS 2003	S. 1106 IFQ Standards of 2003	H.R. 2621 IFQ Standards of 2003	October 2002 Kerry/Snowe	July 2002 Kerry
Enforcement, monitoring, and data collection	<ul style="list-style-type: none"> • Effective enforcement, monitoring, and management • Adequate data collection. • Use observers that yield statistically significant results 	<ul style="list-style-type: none"> • Adequate enforcement • Observers as appropriate 	<ul style="list-style-type: none"> • Adequate monitoring of harvests • Identify management, science, data collection, observer coverage, and enforcement needs 	<ul style="list-style-type: none"> • Effective enforcement, monitoring, and management • Adequate data collection • Use of observers that yield statistically significant results 	<ul style="list-style-type: none"> • Adequate enforcement, management, and data collection • Use of observers that yield statistically significant results 	<ul style="list-style-type: none"> • Effective enforcement, monitoring, and management • Adequate data collection • Use of observers that yield statistically significant results 	<ul style="list-style-type: none"> • Effective enforcement, monitoring, and management • Adequate data collection • Use of observers that yield statistically significant results
Review of established IFQ programs	<ul style="list-style-type: none"> • NRC independent review every 5 years 	<ul style="list-style-type: none"> • Every 5 years 	<ul style="list-style-type: none"> • Every 5 years 	<ul style="list-style-type: none"> • NRC independent review every 5 years 	<ul style="list-style-type: none"> • Review IFQ program no later than 6 months prior to expiration. • Secretarial Review Panel to review 	<ul style="list-style-type: none"> • NRC independent review every 5 years 	<ul style="list-style-type: none"> • Council to review every 5 to 7 years • Secretarial Review Panel will evaluate
Referenda of IFQ program	<ul style="list-style-type: none"> • Single referendum • 2/3 majority 	<ul style="list-style-type: none"> • Two-stage referendum • 60% majority 	<ul style="list-style-type: none"> • Petition with referendum • Petition: 1/3 of those participating in a fishery may petition the Secretary in requesting development of an IFQ program • Referendum: majority 	<ul style="list-style-type: none"> • Single referendum. • 2/3 majority 	<ul style="list-style-type: none"> • Two-stage referendum • 2/3 majority 	<ul style="list-style-type: none"> • Single referendum • 2/3 majority 	<ul style="list-style-type: none"> • Two-stage referendum • 2/3 majority
Permit transfers of quota shares	<ul style="list-style-type: none"> • Sale, lease, or transfer 	<ul style="list-style-type: none"> • Monitor temporary and permanent transfers 	<ul style="list-style-type: none"> • Establish a policy on transferability • Establish a program to monitor transfers 	<ul style="list-style-type: none"> • Sale, lease, or transfer 	<ul style="list-style-type: none"> • May allow transfer of quota on a case-by-case basis to a member of the holders immediate family upon death or disablement • Transfer only allowed within the same category of vessel, fishing gear type, or other appropriate qualifier 	<ul style="list-style-type: none"> • Sale, lease, or transfer 	<ul style="list-style-type: none"> • Allow transferable quotas
Prevent individuals from acquiring excessive shares	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes; 'excessive' defined as more than 1% of the TAC • Council may increase if it is non-detrimental to other IFQ holders 	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • Yes

Guidelines	S 2066 Snowe	H.R. 4749 Gilchrest	NMFS 2003	S. 1106 IFQ Standards of 2003	H.R. 2621 IFQ Standards of 2003	October 2002 Kerry/Snowe	July 2002 Kerry
Right, title, or interest	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time • No right, title, or interest • Quota shall be considered a grant of permission to the holder • Shall not confer any right of compensation to the holder if it is revoked or limited 	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time • IFQ issued may be received, held, or transferred 	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time • No right, title, or interest in or to any fish before the fish is harvested 	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time • No right, title, or interest • Quota consider a grant of permission • Shall contain criteria that governs limitation, revocation, renewal, reallocation, or reissuance of quota • No right of compensation if revoked or limited 	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time 	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time • No right, title, or interest • Quota considered a grant of permission • Program shall contain criteria that governs the limitation, revocation, renewal, reallocation, or reissuance of quota 	<ul style="list-style-type: none"> • Quota may be revoked or limited at any time • No right, title, or interest • Quota considered a grant of permission • No right of compensation if revoked or limited • Include a provision that if quota is not fished 3 in any of 5 consecutive years, quota shall be reallocated
Fees	<ul style="list-style-type: none"> • Recover costs related to administering and implementation the program • Allow up to 25% of any fees collected for aid in financing purchase of quota by entry-level fishermen of small vessels and who are first-time purchasers 	<ul style="list-style-type: none"> • (i) initial allocation equal to 1% of the ex-vessel value (ii) an annual fee, not to exceed 3% of the ex-vessel value (iii) a transfer fee equal to 1% of the ex-vessel value • Amount commensurate with cost of managing the fishery • Fees collected only for the purpose of administering and implementing this Act 	<ul style="list-style-type: none"> • (i) initial allocation equal to 1% of the ex-vessel value (ii) an annual fee, not to exceed 3% of the ex-vessel value (iii) a transfer fee equal to 1% of the ex-vessel value • Consider an auction system or other program to collect royalties for the initial distribution of allocations 	<ul style="list-style-type: none"> • To recover costs related to administering and implementation the program • Allow up to 25% of any fees collected for aid in financing purchase of quota by entry-level fishermen of small vessels and who are first-time purchasers 	<ul style="list-style-type: none"> • Initial allocation fee, an annual fee, and a transfer fee • To recover direct costs related to administering and implementing the program • Fees collected only for the purpose of administering and implementing this Act 	<ul style="list-style-type: none"> • Related to administering and implementation the program • Allow up to 25% of any fees collected to aid in financing purchase of quota by entry-level fishermen of small vessels and who are first-time purchasers 	<ul style="list-style-type: none"> • To recover costs related to administering and implementation the program • Allow up to 25% of any fees collected to aid in financing purchase of quota by entry-level fishermen of small vessels and who are first-time purchasers